

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT BANFF

DETERMINATION

of

Philip Mann

**Sheriff of Grampian, Highland
And Islands at Banff**

in respect of

Fatal Accident Inquiry

relating to the Death of

Neil William Bremner

Banff January 2012.

The Sheriff, having heard evidence on 7 December 2011 and now having resumed consideration of the matter Finds and Determines as follows:-

- (a) In terms of Section 6(1)(a) of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976, Neil William Bremner, aged 39 years (date of birth 08.01.1972), who resided at 1 Thomastown Cottages Turriff, Aberdeenshire, died in the course of his employment at about 11:15 hours on 28 March 2011 within a shed at Woodside of Delgaty, Turriff, Aberdeenshire.
- (b) In Terms of Section 6(1)(b) of the said Act, Mr Bremner's death occurred as the result of neck and chest injuries sustained in an industrial accident when the forklift truck which he was driving toppled

over and part of it struck him on the neck and chest and pinned him to the ground as he attempted to exit the truck as it fell. The accident was caused by human error on the part of Mr Bremner in reversing the truck with its mast extended to such a height that it struck the roof of the shed where he was working thus causing the truck to become unstable and topple over.

- (c) In terms of Section 6(1)(c) of the said Act, I determine that if the forklift truck being driven by Mr Bremner at the time of the accident had been fitted with a seat belt and if Mr Bremner had been wearing such a seat belt at the time of the accident his death might have been avoided, although the accident would still have occurred.
- (d) In terms of Section 6(1)(d) of the said Act, apart from the matters identified in the immediately preceding paragraphs I cannot identify any defect in any system of working which contributed to Mr Bremner's death.
- (e) There is nothing to add in terms of Section 6(1)(e) of the said Act but I make reference to paragraph 6.3 of my note appended hereto.

Sheriff Philip Mann

Note/

Note

1. Representation

- 1.1 The Procurator Fiscal was represented by Mr Main, Procurator Fiscal Depute.
- 1.2 Miss Watt, solicitor, represented Mr Iain Shand who, trading as Woodside Plant, rented the shed where the accident occurred from his mother Mrs Margaret Shand; employed Mr Bremner as a temporary worker through the agency of Ringlink Services Limited, Laurencekirk; and owned the forklift truck driven by Mr Bremner at the time of the accident.
- 1.3 Mr McDonald, Solicitor, represented Ringlink Services Limited.

2. Preliminary Matters

- 2.1 At the outset, as I did at the outset of the inquiry, I express my sympathy and condolences to Mr Bremner's family in respect of his tragic and untimely death.
- 2.2 At the outset of the inquiry I indicated that Mr Bremner's family might not get all of the answers that they might be looking for. I repeat that here with a reminder that the purpose of an inquiry such as this is to ascertain the facts surrounding the death, so far as possible, and not to apportion blame for the death.

3. Witnesses

- 3.1 The following witnesses gave evidence:
 - Graham Peter Bruce c/o Ringlink Services Limited, The Business Park, Aberdeen Road, Laurencekirk.
 - Jacqueline Anne Crighton, Birkenton, Woodside of Delgaty, Turriff.
 - Margaret Fraser Harper or Shand, Woodside of Delgaty, Turriff.

- Romas Jarulaitis, Homelea, Lonmay, Fraserburgh.
- Nerijus Pakstas, 82 Gallowhill Road, Fraserburgh.
- Iain Harper Shand, Woodside of Delgaty, Turriff.
- Police Constable Michael Taylor, c/o Turriff Police Office.
- Mark Milne, Heron Hill, Alvah, Banff.
- John Radcliffe, c/o Health and Safety Executive, Lord Cullen House, Fraser Place, Aberdeen.
- R J Marr, c/o Health and Safety Executive, 1.3 Redgrave Court, Merton Road, Bootle.

3.2 I found all of these witnesses to be credible and reliable and I record my gratitude to them for answering the call to give evidence in these proceedings.

4. Additional evidence

- 4.1 There was lodged a joint minute signed by the Procurator Fiscal Depute, Miss Watt and Mr McDonald. This was read out by Mr Main.
- 4.2 Various photographs, reports, certificates of training and information sheets and other documents were referred to in the course of oral evidence.

5. Findings in Fact

From the oral and documentary evidence I am able to make the following findings in fact:

- 5.1 Mr Bremner was an experienced forklift truck driver who held appropriate certificates of training.
- 5.2 Mr Bremner was a self employed worker under contract as a temporary worker with Ringlink Services Limited. He was hard working and reliable and was well respected.

- 5.3 Ringlink (Scotland) Limited is a cooperative organisation which matches requests from its members for machinery or labour with the fulfilment of those requests by others of its members. Both Iain Shand, trading as Woodside Plant, and Ringlink Services Limited are members of Ringlink (Scotland) Limited.
- 5.4 At the time of his death and by arrangement through Ringlink (Scotland) Limited Mr Bremner had been supplied by Ringlink Services Limited as a temporary worker to Iain Shand. Mr Bremner's duties were to drive a forklift truck owned by Mr Shand in a shed at Woodside of Delgaty for the purpose of shifting boxes of potatoes as part of a grading process. His duties also involved supervising other workers, including Mr Jarulaitis and Mr Pakstas, who were involved in the process. Mr Shand was not involved in the process except to give directions at the start of each day. He was not present at the time of the accident.
- 5.5 Ringlink Services Limited put Mr Bremner forward to meet Mr Shand's request for a forklift truck driver having previously satisfied themselves that Mr Bremner was suitably qualified and experienced for such a task. At the outset of Mr Bremner's employment Mr Shand observed him to be a competent forklift truck driver. During the course of the employment Mr Shand had found it necessary on more than one occasion to advise Mr Bremner to drive more slowly. On one occasion this was in response to an observation made by Mr Shand's mother, Mrs Margaret Shand.
- 5.6 The forklift truck in question was a counterbalanced mast fork lift truck. Such trucks are unstable and liable to overturn in certain conditions. These conditions include when the direction of travel of the truck is suddenly altered or impeded, even when it is travelling at speeds as low as 4 miles per hour. The forklift truck in question was capable of speeds of up to 12 miles per hour in both forward and reverse gears.
- 5.7 A forklift truck transports loads such as boxes of potatoes by carrying them on its forks which protrude from the front of the truck and which are

- attached to a mast. The height of the forks is adjusted by raising or lowering the mast. In this way loads can be raised or lowered for stacking or unstacking. The forklift truck in question had a mast which could be extended to such a height that it was capable of stacking potato boxes in stacks eight high, although in Mr Shand's shed the boxes were normally stacked no more than five high.
- 5.8 When a load is being transported and once a load has been deposited and the forks are unloaded (in other words, when the forklift truck is moving from one location to another) it is good and safe practice for the forks to be lowered by lowering the height of the mast so as to avoid the risk of an extended mast striking an overhead obstacle.
- 5.9 At the time of the accident Mr Bremner was reversing the forklift truck with the forks unloaded and the mast extended. He was travelling at a speed which, although relatively modest, was too fast in the circumstances which occurred. As an experienced operator he ought to have appreciated that in driving in this manner he was putting himself in danger.
- 5.10 The extended mast of the forklift truck struck a part of the roof structure of the shed. At the moment of impact the forklift truck was turning. The impact caused the forklift truck to become unstable and it toppled over on its side.
- 5.11 The forklift truck was not fitted with a seat belt. It was of such an age that it was not compulsory that it be so fitted. Mr Shand had not considered it necessary to have a seat belt fitted because the surface within the shed was flat concrete and he had assessed that there was no risk of the forklift truck overturning if driven properly, that is with the mast not extended. Furthermore, the job upon which Mr Bremner was engaged required that he frequently alight from the machine in order to check boxes and labels.

5.12 The Health and Safety Executive have an information sheet entitled "Fitting and use of restraining systems on lift trucks". Under the heading "When should operator restraint be used?" it provides as follows:-

"Operator restraint should be worn at all times when LTs are in motion unless:

- The LT operator needs to dismount repeatedly and frequently (eg to position loads on the forks or check stock levels: *and* (my emphasis)
- The truck is used on a smooth, firm, level surface (eg concrete floor): *and* (my emphasis)
- The truck is unlikely to be operated at speeds or in ways which would cause overturn due to the nature of the operations being carried out and the area in which it is working"

Because of the speed capability of the forklift truck in question and the height capability of its mast, the information sheet could be construed as recommending the fitting and wearing of a driver restraint, such as a seat belt, in the circumstances in which the forklift truck was being used at the time of the accident. Mr Shand was not aware of the information sheet. Nor would Mr Bremner have been aware of its existence.

5.13 In any event, even if a seat belt had been fitted Mr Bremner would not have worn it. This was because the nature of the job upon which he was engaged required that he frequently and constantly alight from the truck to check boxes and labels. This would have made the fastening and unfastening of a seat belt very inconvenient. Mr Bremner was thus not restrained as the truck toppled on its side.

5.14 As the truck toppled, Mr Bremner, being unrestrained, instinctively tried to exit from the truck on the side towards which it was falling. His exit was impeded by a stanchion. He was struck by the frame of the driver's compartment of the truck and was pinned to the ground by his neck and chest. He died instantaneously as a result. Even if his exit had not been

impeded it is likely that he would have been crushed by the machine in any event.

- 5.15 Although Romas Jarulaitis, Nerijus Pakstas, Jacqueline Crighton and Margaret Shand all played their part in calling the emergency services quickly to the scene and although Mr Mark Milne prepared to improvise a means of lifting the forklift truck from on top of Mr Bremner (but was instructed by Constable Taylor not to proceed) there was nothing that could have been done to save Mr Bremner's life following the accident.

6. Submissions and Determination

- 6.1 There was virtually no controversy among the representatives as to the formal determinations that they wished me to make and these are reflected in my interlocutor.
- 6.2 However, Miss Watt submitted that on the evidence it could be said that Mr Bremner would not have worn a seat belt even if it had been fitted. The evidence included testimony from Mr Milne that he had worked alongside Mr Bremner at another location for a different employer and had seen him operate similar equipment but had never seen him wearing a seatbelt even though one had been fitted. Furthermore, both Mr Shand and Mr Milne, both of whom had experience of driving forklift trucks, said that they would not have worn a seatbelt had they been in Mr Bremner's position at the time of the accident. Mr Marr gave evidence that in his professional experience he had never seen a forklift truck without a seat belt having been fitted either at the point of manufacture or retrospectively. He had previously investigated two deaths occurring in similar circumstances to Mr Bremner's death where the driver had not worn a seat belt. From this he concluded that it was not unusual for forklift truck drivers not to wear a seatbelt even if fitted. I am satisfied on a balance of probabilities that Mr Bremner would not have worn a seat

belt even if it had been fitted and I have reflected that in finding in fact 5.13

- 6.3 Mr Main suggested that I might consider making a determination in terms of section 6(1)(e) of the Act to the effect that the Health and Safety executive should amend their information sheet entitled "Fitting and use of restraining systems on lift trucks". He suggested that the information sheet should be amended so as to recommend that an operator restraint should be worn at all times during the operation of a forklift truck such as the one involved in this accident, regardless of conditions, or alternatively that the section headed "When should operator restraint be used?" should be amended so as to make it clearer that all of the listed conditions should be present before it would be deemed safe not to use a restraint. I have not found it appropriate to make such a formal determination because it seems to me that, in the circumstances, the matters raised by Mr Main in this regard do not amount to facts which are relevant to the circumstances of the death. Mr Marr's evidence was that very few people know about the existence of the information sheet although it is freely available on the Health and Safety Executive website. Mr Shand was not aware of its existence. I have found on a balance of probability that Mr Bremner would not have known about it. His decision to operate the forklift truck in the absence of a seat belt could not have been influenced by it. Nonetheless, it is clear from the evidence of both Mr Marr and his colleague Mr Radcliffe that the Health and Safety Executive might profitably consider rewording the information sheet so as to achieve the effect suggested by Mr Main and I recommend that they should so consider the matter. They might also wish to consider whether there are any reasonable means by which awareness of the existence of such information could be raised amongst persons likely to be engaged in driving, or directing operations involving, forklift trucks of the kind in question. Perhaps, for example, they could seek to encourage

manufacturers of such machines to affix an appropriately worded label in a prominent location on each machine at the time of manufacture.

7. Final Matters

- 7.1 There is nothing for me to add except to express my thanks to the procurator fiscal depute and agents and to the interpreter who assisted with the evidence of Mr Jarulaitis and Mr Pakstas for their assistance in this enquiry, which was greatly appreciated.